

MANDATOR

CHAMBERS COPY

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N.A. sued herein erroneously as J. P. MORGAN
CHASE BANK

1 | CRAIG ALLEN ROGERS, an individual

Plaintiff,

v.

EQUIFAX INFORMATION
SERVICES LLC, a business, form
unknown; J. P. MORGAN CHASE
BANK, a business entity; and DOES 1-
10, Inclusive.

Defendants

Case No. CV14-01708-JFW (AGRx)

**STIPULATED PROTECTIVE
ORDER**

NOTE CHANGES MADE BY THE COURT

IT IS SO ORDERED.

10/23/2014

Alicia G. Rosenberg

ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely to involve
22 production of confidential, proprietary, or private information for which special
23 protection from public disclosure and from use for any purpose other than
24 prosecuting this litigation may be warranted. Accordingly, the parties hereby
25 stipulate to and petition the court to enter the following Stipulated Protective
26 Order. The parties acknowledge that this Order does not confer blanket protections
27 on all disclosures or responses to discovery and that the protection it affords from
28 public disclosure and use extends only to the limited information or items that are

1 entitled to confidential treatment under the applicable legal principles. The parties
2 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
3 Protective Order does not entitle them to file confidential information under seal;
4 Civil Local Rule 79 set forth the procedures that must be followed and the
5 standards that will be applied when a party seeks permission from the court to file
6 material under seal.

7 **2. DEFINITIONS**

8 2.1 **Challenging Party:** a Party or Non-Party that challenges the
9 designation of information or items under this Order.

10 2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rule of Civil Procedure 26(c).

13 2.3 **Counsel (without qualifier):** Outside Counsel of Record and House
14 Counsel (as well as their support staff).

15 2.4 **Designating Party:** a Party or Non-Party that designates information
16 or items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.5 **Disclosure or Discovery Material:** all items or information,
19 regardless of the medium or manner in which it is generated, stored, or maintained
20 (including, among other things, testimony, transcripts, and tangible things), that
21 are produced or generated in disclosures or responses to discovery in this matter.

22 2.6 **Expert:** a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who has been retained by a Party or its counsel to
24 serve as an expert witness or as a consultant in this action.

25 2.7 **House Counsel:** attorneys who are employees of a party to this
26 action. House Counsel does not include Outside Counsel of Record or any other
27 outside counsel.

28 2.8 **Non-Party:** any natural person, partnership, corporation, association,

1 or other legal entity not named as a Party to this action.

2 2.9 Outside Counsel of Record: attorneys, and their partners and
3 employees of their firms, who are not employees of a party to this action but are
4 retained to represent or advise a party to this action and have appeared in this
5 action on behalf of that party or are affiliated with a law firm which has appeared
6 on behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and
9 their support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits
14 or demonstrations, and organizing, storing, or retrieving data in any form or
15 medium) and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as "CONFIDENTIAL."

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 **3. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time
28 of disclosure to a Receiving Party or becomes part of the public domain after its

1 disclosure to a Receiving Party as a result of publication not involving a violation
2 of this Order, including becoming part of the public record through trial or
3 otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source
5 who obtained the information lawfully and under no obligation of confidentiality
6 to the Designating Party. Any use of Protected Material at trial shall be governed
7 by a separate agreement or order.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this action,
13 with or without prejudice; or (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
15 including the time limits for filing any motions or applications for extension of
16 time pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate
22 for protection only those parts of material, documents, items, or oral or written
23 communications that qualify – so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made for an
28 improper purpose (e.g., to unnecessarily encumber or retard the case development

1 process or to impose unnecessary expenses and burdens on other parties) expose
2 the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that
4 it designated for protection do not qualify for protection, that Designating Party
5 must promptly notify all other Parties that it is withdrawing the mistaken
6 designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided
8 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for
10 protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
16 each page that contains protected material. If only a portion or portions of the
17 material on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the
19 margins).

20 A Party or Non-Party that makes original documents or materials available
21 for inspection need not designate them for protection until after the inspecting
22 Party has indicated which material it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28 affix the "CONFIDENTIAL" legend to each page that contains Protected

1 Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins).

4 (b) for testimony given in deposition ~~or in other pretrial or trial~~
5 proceedings, that the Designating Party identify on the record, before the close of
6 the deposition, hearing, or other proceeding, all protected testimony.

7 (c) for information produced in some form other than documentary and for
8 any other tangible items, that the Producing Party affix in a prominent place on the
9 exterior of the container or containers in which the information or item is stored
10 the legend "CONFIDENTIAL." If only a portion or portions of the information or
11 item warrant protection, the Producing Party, to the extent practicable, shall
12 identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
14 qualified information or items as CONFIDENTIAL does not waive the
15 Designating Party's right to secure protection under this Order for such material.
16 In the event a Producing Party fails to designate information as CONFIDENTIAL,
17 the Producing Party shall notify the Receiving Party/Parties of the disclosure and
18 provide the Receiving Party/Parties with replacement document(s) or thing(s)
19 marked in accordance with this Order. Upon receipt of replacement document(s)
20 or thing(s), the Receiving Party shall make all reasonable efforts to (a) retrieve the
21 document(s) or thing(s) not marked, and all copies thereof, and return them to the
22 Producing Party or their counsel or (b) certify all such document(s) or thing(s)
23 were destroyed.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time. Unless a prompt challenge to a
27 Designating Party's confidentiality designation is necessary to avoid foreseeable,
28 substantial unfairness, unnecessary economic burdens, or a significant disruption

1 or delay of the litigation, a Party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process by providing written notice of each designation it is challenging
6 and describing the basis for each challenge. To avoid ambiguity as to whether a
7 challenge has been made, the written notice must recite that the challenge to
8 confidentiality is being made in accordance with this specific paragraph of the
9 Protective Order. The parties shall attempt to resolve each challenge in good faith
10 and must begin the process by conferring directly (in voice to voice dialogue;
11 other forms of communication, alone, are not sufficient) within 14 days of the date
12 of service of notice. In conferring, the Challenging Party must explain the basis
13 for its belief that the confidentiality designation was not proper and must give the
14 Designating Party an opportunity to review the designated material, to reconsider
15 the circumstances, and, if no change in designation is offered, to explain the basis
16 for the chosen designation. A Challenging Party may proceed to the next stage of
17 the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and
19 confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
21 without court intervention, the Challenging Party shall file and serve a motion,
22 consistent with Civil Local Rule³7 (and in compliance with Civil Local Rule 79-5,
23 if applicable), to challenge confidentiality, including a challenge to the designation
24 of a deposition transcript or any portions thereof, within 21 days of the initial
25 notice of challenge or within 14 days of the Parties agreeing that the meet and
26 confer process will not resolve their dispute, whichever is earlier. Each such
27 motion must be accompanied by a competent declaration affirming that the
28 movant has complied with the meet and confer requirements imposed in the

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1 preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges, and those made for an improper purpose
4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the Challenging Party to sanctions. Unless the Designating Party has
6 withdrawn the confidentiality designation, all parties shall continue to afford the
7 material in question the level of protection to which it is entitled under the
8 Producing Party's designation until the court rules on the challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material, and
11 any summaries, copies, abstracts or information derived therefrom, that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 case only for prosecuting, defending, or attempting to settle this litigation. Such
14 Protected Material may be disclosed only to the categories of persons and under
15 the conditions described in this Order. When the litigation has been terminated, a
16 Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 "CONFIDENTIAL" only to:

- 25 (a) the Receiving Party's Outside Counsel of Record in this action;
- 26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this litigation;
- 28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the
2 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants,
5 mock jurors, and Professional Vendors to whom disclosure is reasonably
6 necessary for this litigation and who have signed the "Acknowledgment and
7 Agreement to Be Bound" (Exhibit A);

8 (f) witnesses in the action to whom disclosure is reasonably necessary and
9 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
10 A), unless otherwise agreed by the Designating Party or ordered by the court.

11 Pages of transcribed deposition testimony or exhibits to depositions that reveal
12 Protected Material must be separately bound by the court reporter and may not be
13 disclosed to anyone except as permitted under this Order;

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
17 PRODUCED IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other
19 litigation that compels disclosure of any information or items designated in this
20 action as "CONFIDENTIAL," that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order
24 to issue in the other litigation that some or all of the material covered by the
25 subpoena or order is subject to this Protective Order. Such notification shall
26 include a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued
28 by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served
2 with the subpoena or court order shall not produce any information designated in
3 this action as “CONFIDENTIAL” before a determination by the court from which
4 the subpoena or order issued, unless the Party has obtained the Designating
5 Party’s written permission. The Designating Party shall bear the burden and
6 expense of seeking protection in that court of its confidential material – and
7 nothing in these provisions should be construed as authorizing or encouraging a
8 Receiving Party in this action to disobey a lawful directive from another court.

9 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION**

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party that
21 some or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this litigation, the relevant discovery request(s), and a
25 reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by the Non-
27 Party.

28 (c) If the Non-Party fails to object or seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the
2 Receiving Party may produce the Non-Party's confidential information responsive
3 to the discovery request. If the Non-Party timely seeks a protective order, the
4 Receiving Party shall not produce any information in its possession or control that
5 is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court. Absent a court order to the contrary, the Non-Party
7 shall bear the burden and expense of seeking protection in this court of its
8 Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED
10 MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has
12 disclosed Protected Material to any person or in any circumstance not authorized
13 under this Stipulated Protective Order, the Receiving Party must immediately (a)
14 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
15 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
16 the person or persons to whom unauthorized disclosures were made of all the
17 terms of this Order, and (d) request such person or persons to execute the
18 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
19 A.

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR
21 OTHERWISE PROTECTED MATERIAL**

22 Pursuant to Federal Rule of Civil Evidence 502(d), any inadvertent
23 production of any privileged Information ("Privileged Information") shall not
24 constitute a waiver of any associated privilege (e.g., attorney/client privilege, work
25 product privilege) nor result in a subject matter waiver of any kind. In the event
26 the Producing Party learns that Privileged Information has been inadvertently
27 produced, the Producing Party shall immediately notify the Receiving Party and
28 the Receiving Party shall immediately return the Privileged Information (and all

1 hard copies) to the Producing Party and act pursuant to Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
3 procedure may be established in an e-discovery order that provides for production
4 without prior privilege review. Pursuant to Federal Rule of Evidence 502(e), this
5 agreement with respect to the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection is
7 hereby incorporated into this Order.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of
10 any person to seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Order no Party waives any right it otherwise would have to object to disclosing or
13 producing any information or item on any ground not addressed in this Order.
14 Similarly, no Party waives any right to object on any ground to use in evidence of
15 any of the material covered by this Order.

16 12.3 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected
19 Material. A Party that seeks to file under seal any Protected Material must comply
20 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be
21 filed under seal pursuant to a court order authorizing the sealing of the specific
22 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order
23 62, a sealing order will issue only upon a request establishing that the Protected
24 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
25 protection under the law. If a Receiving Party's request to file Protected Material
26 under seal pursuant to Civil Local Rule 79 is denied by the court, then the
27 Receiving Party may file the information in the public record pursuant to Civil
28 Local Rule 79-5.3 unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 3, 2014 /s/ Robert F. Brennan
Attorneys for PLAINTIFF

DATED: September 3, 2014 /s/ George G. Weickhardt
Attorneys for CHASE

DATED: September 3, 2014 /s/ Thomas P. Quinn
Attorneys for EQUIFAX

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EXHIBIT A

1 EXHIBIT A
2

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
4

5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty of perjury
7 that I have read in its entirety and understand the Stipulated Protective Order that
8 was issued by the United States District Court for the Northern District of
9 California on [date] in the case of *Craig Allen Rogers v. Equifax, et al.* USDC,
10 Central District Case No. CV14-01708-JFW(GRx). I agree to comply with and to
11 be bound by all the terms of this Stipulated Protective Order and I understand and
12 acknowledge that failure to so comply could expose me to sanctions and
13 punishment in the nature of contempt. I solemnly promise that I will not disclose
14 in any manner any information or item that is subject to this Stipulated Protective
15 Order to any person or entity except in strict compliance with the provisions of
16 this Order.

17 I further agree to submit to the jurisdiction of the United States District
18 Central Court for the Northern District of California for the purpose of enforcing the terms
19 of this Stipulated Protective Order, even if such enforcement proceedings occur
20 after termination of this action.

21 I hereby appoint _____ [print or type full name]
22 of _____ [print or type full address and
23 telephone number] as my California agent for service of process in connection
24 with this action or any proceedings related to enforcement of this Stipulated
25 Protective Order.

26 Date: _____

27 City and State where sworn and signed:
28 _____

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2 Printed name: _____

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4 Signature: _____

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